

Appl. No. 10/803,318  
Atty. Docket No. 2003B101A  
Amdmt. dated July 20, 2006  
Reply to Office Action of June 15, 2006

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### REMARKS/ARGUMENTS

This reply is in response to the Office Action dated June 15, 2006. Claims 1-22 are pending in the application and stand rejected. Applicants have cancelled claims 1-22 without prejudice and added new claims 23-38. Entry of the foregoing amendment and reconsideration of the claims is respectfully requested.

Claims 1-9, 16-17, and 20-22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Lind et al. (U.S. Patent Publication No. 2001/0003624) hereafter "Lind." Claims 10-15 and 18-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lind in view of Agouri et al. (U.S. Patent No. 4,126,648) hereafter "Agouri."

Applicants have cancelled claims 1-22 without prejudice and added new claims 23-38 to more clearly recite aspects of the invention. Neither Lind nor Agouri, alone or in combination, teach, show or suggest a film structure comprising an A/B/A structure, wherein core layer B comprises 60-90 wt.% LDPE, and 40-10 wt.% HDPE, and skin layers A are each independently selected from a composition comprising 80-100 wt.% mPE, 20-0 wt.% HDPE, and 20-0 wt.% LDPE, as recited in base claim 23 and those dependent therefrom. Further, neither Lind nor Agouri, alone or in combination, teach, show or suggest a film comprising an A/B/A structure, wherein the A layers are skin layers, which may be the same or different, each comprising an mPE having a density of between about 0.910 to 0.940 g/cm<sup>3</sup>, and the B is a core layer comprising a blend comprising 60-90 wt.% LDPE and 40-10 wt.% HDPE, as recited in base claim 24 and those dependent therefrom.

Lind discloses multilayer films. However, Lind does not teach, show or suggest a film structure comprising an A/B/A structure where the core layer B comprises 60-90 wt% LDPE and 40-10 wt% HDPE, as recited in all the claims. Lind discloses a "at least three layers wherein the core layer is a barrier layer." See, Lind at paragraph [0014], ll. 1-4. The barrier layer 14 is described in detail at paragraph [0026]. There, the barrier layer is disclosed as comprising materials that minimize the transmission of oxygen through the structure. This criteria is not met by HDPE and LDPE.

In contrast, the core layer of the present invention is a blend comprising high density and low density polyethylene. Neither of these two components is mentioned as a suitable barrier

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layer by Lind. The reason being HDPE, LDPE, and blends thereof would not provide sufficient barrier properties, particularly sufficient oxygen barrier properties as stressed by Lind. The following chart shows water vapor and oxygen transmission rates for several of the compositions described by Lind, as well as for HDPE and LDPE, where water vapor transmission rate (WVTR) is measured in  $\text{g/m}^2/\text{day}$  and oxygen transmission rate (OTR) is measured in  $\text{cm}^3/\text{m}^2/\text{day}/\text{atm}$ .

Film (25 $\mu\text{m}$ )	OTR	WVTR
Aluminum	<0.1	<0.1
EVOH	0.2-1.6	24-120
PVdC	0.8-9.2	0.3-3.2
PA6 (Nylon 6)	80	200
HDPE	2100	6-8
LDPE	7100	16-24

Source: Day, *Principles and Applications of Modified Atmosphere Packaging of Food*, (1993) 115-133.

As shown by the above table, HDPE and LDPE (and, presumably, blends thereof) clearly are inferior with regard to oxygen and moisture barrier properties compared to those compositions described in Lind. As such, one of ordinary skill in the art would not be motivated to replace the barrier layers of Lind with one of the other materials described as useful for the skin layers. Therefore, Lind does not teach, show or suggest the claimed invention. Withdrawal of the rejection and allowance of the claims is respectfully requested.

Regarding the combination of Lind and Agouri, Agouri does not teach, show or suggest single site, metallocene catalysts. Further, Agouri discloses only single layer films of grafted copolymers. Therefore, there is no motivation from within Agouri or Lind to combine their teachings. Insofar as the record shows, if it is true that a core layer of an A/B/A structure can comprise HDPE and LDPE, it has been gleaned from the Applicants' own specification. Such is nothing more than impermissible hindsight.

Furthermore, there is no motivation to replace the core/barrier layer of Lind with the film from Agouri. As discussed above, oxygen barrier properties are essential in Lind. Such

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modification would render Lind unsuitable for its intended purpose since HDPE and LDPE and blends thereof have poor barrier properties as discussed above. There is no suggestion or motivation to make the proposed modification if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose. See, In re Gordon, 733 F.2d 900 (Fed. Cir. 1984); MPEP § 2143.01. Therefore, such proposed modification is not permissible under 35 U.S.C. § 103(a). Withdrawal of the rejection and allowance of the claims is respectfully requested.

The secondary references made of record are noted. However, it is believed that the secondary references are no more pertinent to the Applicants' disclosure than the primary references cited in the Office Action. Therefore, Applicants believes that a detailed discussion of the secondary references is not necessary for a full and complete response to this Office Action.

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### CONCLUSION

Having addressed all issues set out in the office action, Applicants respectfully submits that the pending claims are now in condition for allowance. Applicants invite the Examiner to telephone the undersigned attorney if there are any issues outstanding which have not been addressed to the Examiner's satisfaction.

Respectfully submitted,

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